

HOUSE BILL No. 1280

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-34-1-4.

Synopsis: Probable cause hearings. Allows a defendant to file a motion to dismiss a criminal indictment or information on the grounds that the indictment or information was issued without probable cause to believe that an offense was committed. Provides for a hearing on the motion.

Effective: July 1, 2001.

Kuzman

January 9, 2001, read first time and referred to Committee on Courts and Criminal Code.

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Introduced

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE BILL No. 1280

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-34-1-4 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) The court may,
- 3 upon motion of the defendant, dismiss the indictment or information
- 4 upon any of the following grounds:
- 5 (1) The indictment or information, or any count thereof, is
- 6 defective under section 6 of this chapter.
- 7 (2) Misjoinder of offenses or parties defendant, or duplicity of
- 8 allegation in counts.
- 9 (3) The grand jury proceeding was defective.
- 10 (4) The indictment or information does not state the offense with
- 11 sufficient certainty.
- 12 (5) The facts stated do not constitute an offense.
- 13 (6) The defendant has immunity with respect to the offense
- 14 charged.
- 15 (7) The prosecution is barred by reason of a previous prosecution.
- 16 (8) The prosecution is untimely brought.
- 17 (9) The defendant has been denied the right to a speedy trial.



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(10) There exists some jurisdictional impediment to conviction of the defendant for the offense charged.

(11) **The indictment or information was issued without probable cause to believe that an offense was committed.**

(12) Any other ground that is a basis for dismissal as a matter of law.

(b) Except as otherwise provided, a motion under this section shall be made no later than:

(1) twenty (20) days if the defendant is charged with a felony; or

(2) ten (10) days if the defendant is charged only with one (1) or more misdemeanors;

prior to the omnibus date. A motion made thereafter may be summarily denied if based upon a ground specified in ~~subdivision~~ **subsection** (a)(1), (a)(2), (a)(3), (a)(4), ~~or (a)(5), of this section: or (a)(11).~~ A motion to dismiss based upon a ground specified in ~~subdivision~~ **subsection** (a)(6), (a)(7), (a)(8), (a)(9), (a)(10), or ~~(a)(11) of this section (a)(12)~~ may be made or renewed at any time before or during trial. A motion to dismiss based upon lack of jurisdiction over the subject matter may be made at any time.

(c) Upon the motion to dismiss, a defendant who is in a position adequately to raise more than one (1) ground in support thereof shall raise every ground upon which he intends to challenge the indictment or information. A subsequent motion based upon a ground not properly raised may be summarily denied. However, the court, in the interest of justice and for good cause shown, may entertain and dispose of such a motion on the merits.

(d) Upon the motion to dismiss, the court shall:

(1) overrule the motion to dismiss;

(2) grant the motion to dismiss and discharge the defendant; or

(3) grant the motion to dismiss and deny discharge of the defendant if the court determines that the indictment or information may be cured by amendment under section 5 of this chapter and the prosecuting attorney has moved for leave to amend.

The court may rule on a motion based on a ground specified in subsection (a)(11) only after conducting a hearing on the motion in which the defendant has an opportunity to present evidence and cross-examine witnesses. If the court grants the motion under subdivision (3) and grants the prosecuting attorney leave to amend, any prior order imposing conditions of release pending trial shall stand unless otherwise modified or removed by order of the court.

(e) If the court grants a motion under subsection (a)(3) and the

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1 prosecuting attorney informs the court on the record that the charges
2 will be refiled within seventy-two (72) hours by information:

3 (1) the court may not discharge the defendant; and

4 (2) any prior order concerning release pending trial remains in
5 force unless it is modified or removed by the court.

6 (f) An order of dismissal does not, of itself, constitute a bar to a
7 subsequent prosecution of the same crime or crimes except as
8 otherwise provided by law.

9 SECTION 2. [EFFECTIVE JULY 1, 2001] **IC 35-34-1-4, as**
10 **amended by this act, applies to all informations and indictments**
11 **filed in a court after June 30, 2001, regardless of when the offense**
12 **occurred.**

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